

AMENDED IN ASSEMBLY MARCH 28, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## Assembly Joint Resolution

No. 43

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**Introduced by Assembly Member Hayashi**  
*(Coauthors: Assembly Members Galgiani, Horton, Portantino, Torrico, and Wolk)*

January 23, 2008

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Assembly Joint Resolution No. 43—Relative to the federal Help America Vote Act of 2002.

### LEGISLATIVE COUNSEL’S DIGEST

AJR 43, as amended, Hayashi. Voting rights: mental disability.

Existing law requires the county elections official to cancel the voter registration of any person whose mental incompetency is legally established by a court or a unanimous jury determination under specified circumstances and the court has found that the person is not capable of completing an affidavit of registration.

This measure would call on the Congress and the President of the United States to amend the Help America Vote Act (~~42 U.S.C. Sec. 15301 et seq.~~) of 2002 to ensure that eligible citizens of the United States who wish to vote may only be denied the right to vote if they cannot indicate, with or without help, a specific desire to participate in the voting process.

Fiscal committee: no.

- 1 WHEREAS, The State of California is among those states that
- 2 ~~protects~~ *protect* the right to vote of any person who has a mental
- 3 disability, ~~imposes~~ *impose* strict requirements for canceling a
- 4 person’s voter registration, and ~~allows~~ *allow* a cancellation only

1 if that person is found to be legally incompetent in a formal judicial  
2 proceeding; and

3 WHEREAS, In Missouri, advocates for the mentally ill have  
4 sued the state in their effort to make it easier for people under  
5 guardianship for mental incapacity to vote, and in New Jersey  
6 advocates may succeed in placing on the November ballot an  
7 amendment to the state's constitution to replace language  
8 forbidding an "idiot or insane person" to vote. Advocates for  
9 persons with disabilities are trying to have those words removed  
10 but are worried that the replacement language is so vague that it  
11 may be unfairly restrictive; and

12 WHEREAS, In Maine, a federal ruling a few years ago held  
13 that a provision of that state's constitution, twice affirmed by a  
14 referendum of the voters, was discriminatory because it barred  
15 voting by people under guardianship for mental illness. Also, in  
16 recent local elections held in Alabama, South Carolina, and  
17 elsewhere, there were accusations of ballots being cast on behalf  
18 of nursing home residents who were mentally incompetent to vote;  
19 and

20 WHEREAS, Rhode Island is among a growing number of states  
21 presently grappling with the question of who is too mentally  
22 impaired to vote, and the issue is drawing attention because of  
23 increasing efforts by the mentally ill and their advocates to secure  
24 voting rights for persons with a mental disability. In addition, there  
25 is mounting concern from psychiatrists and others who work with  
26 the elderly about the rights and risks of voting by people with  
27 conditions like Alzheimer's disease and dementia; and

28 WHEREAS, State laws vary and are inconsistently applied,  
29 according to Jennifer Mathis, deputy legal director for the Bazelon  
30 Center for Mental Health Law, an advocacy group in Washington,  
31 D.C.; Ms. Mathis has said that most states fall into one of two  
32 categories: about 18 states bar voting by people under guardianship  
33 or who are non compos mentis ("not master of one's own mind"),  
34 a determination that is often not clearly defined, and another 18  
35 states prohibit voting if there is a specific determination that the  
36 person lacks voting competence; and

37 WHEREAS, This summer, recommendations for national  
38 standards will be released by a group of psychiatrists, lawyers, and  
39 others led by the American Bar Association, suggesting that people  
40 be prohibited from voting only if they cannot indicate, with or

1 without help, “a specific desire to participate in the voting process”;  
2 now, therefore, be it

3 *Resolved by the Assembly and the Senate of the State of*  
4 *California, jointly*, That the Legislature of California calls on the  
5 Congress and the President of the United States to amend the Help  
6 America Vote Act of 2002 (42 U.S.C. Sec. 15301 et seq.) to ensure  
7 that eligible citizens of the United States who wish to vote may  
8 only be denied the right to vote if they cannot indicate, with or  
9 without help, a specific desire to participate in the voting process;  
10 and be it further

11 *Resolved*, That the Chief Clerk of the Assembly transmit copies  
12 of this resolution to the President and Vice President of the United  
13 States, to the Speaker of the House of Representatives, to the  
14 Majority Leader of the Senate, and to each Senator and  
15 Representative from California in the Congress of the United  
16 States.